

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 450 OF 2003

Babu Ram, S/O Sri Lekh Raj,
R/O Moh, Kazibag, Kahsipur,
District Udham Singh Nagar.

... **Appellant.**

Versus

1. Sri Mohd. Haneef, S/O Sri Tasleem Ahmad,
R/O Moh. Khatari, Ramnagar, P.S. & Tahsil Ramnagar, District
Nainital.

2. The New India Assurance
Company Ltd. Haldwani, Branch Ramnagar,
District Nainital, through Divisional Mnager,
Divisional Office, Kashipur,
District Udham Singh Nagar

... **Respondents.**

Sri Dharam Veer, Learned Sr. Advocate,
Assisted by Sri B.S. Parihar, learned counsel for the appellant.
Sri Anil Kumar Joshi, Advocate, learned counsel for the respondent –Insurance
Co.

**Coram : Hon’ble Irshad Hussain, J.
Hon’ble B.S. Verma, J.**

Date December 08, 2004.

(Per Hon’ble Irshad Hussain, J.)

This is an appeal under Section 173 of the Motor Vehicles Act, 1988, against the judgment and order dated 2709-2003, passed by Motor Accident Claims Tribunal *(for short the Tribunal)* in Claim Petition No. 252 of 2002.

Brief facts of the case were that the claimant Babu Ram, a Rickshaw puller by profession, met with a motor vehicle accident, on 7.3.2002. He sustained injuries. His right leg was amputated. He filed claim petition alleging his monthly income of Rs. 4,000/-

and claimed incidental expenses towards medical treatment, etc. and other statutory benefits. The learned Tribunal on appreciation of the evidence on record was of the view that although the injured-claimant was engaged in the profession of Rickshaw Puller, it was not proved that he was earning Rs. 4,000/- per month. His income was, therefore, calculated on the basis of his profession and attending circumstances at Rs. 2,500/- per month. He being age about 44 years, the multiplier of 15 was applied and the compensation was calculated after treating the disability as 85% only.

Learned counsel for the appellant- claimant argued that the learned Tribunal failed to properly appraise the evidence in regard to the monthly income of the injured as the certificate given by the school management shows that injured was being paid Rs. 3,000/- per month as remuneration for bringing the children to the school and that there was also evidence that the injured was also making some earning while taking other passengers on hire in his Rickshaw and that his monthly earning was not less than Rs. 4,000/- per month. Having gone through the finding on Issue No. 4, we are not inclined to find favour with the submission of the learned counsel because the evidence did not indicate that the school management was charging Rs. 150/- per boy and that the amount was realized to be paid to the claimant by the management itself. Since the management itself was not making the payment, the evidence and the certificate in that regard was rightly not relied upon by the learned Tribunal and considering the engagement of the injured-claimant as Rickshaw Puller, his income was rightly assessed at Rs. 2,500/- per month.

Another argument raised was that since one of the leg was amputated, the claimant had become fully incapable to carry on his profession of Rickshaw Puller and in that event, it being a case of 100% disability, the compensation should have been calculated without taking 85% of the income of the claimant-injured and that the compensation should have been calculated on the basis of the

yearly income calculated @ Rs. 2,500/- per month. In support of the submission, learned counsel for the appellant placed reliance on a decision of the Apex Court in the matter of **“Pratap Narain Singh Deo Vs. Srinivas Sabata and another”**; (1976) 1 S.C.C. 289. We have gone through the reported decision and found that in the case before the Apex Court, the disability of a carpenter whose one hand had been amputated was adjudged 100% in view of the fact that the carpenter by virtue of his profession has been rendered useless. In the instant case, by reason of amputation of one leg, the claimant-injured had ceased to carry on his profession and even if the certificate shows the disability of 85% only, the same could safely be taken to be 100% by following the reported decision. Therefore, the submission of the learned counsel for the appellant has force and we accordingly are of the view that the learned Tribunal should have held that the disability was 100% and the amount of compensation should have been accordingly calculated.

For the reasons aforesaid, the compensation comes to Rs. 30,000/- x 15 = Rs. 4,50,000/- instead of Rs. 3,82,500/-, as calculated by the Claims Tribunal. Besides this, sum of Rs. 3,000/- was awarded towards medical expenses, which is also on the lower side, considering the grievous injury and amputation of one of the legs of the injured. We feel it just and proper to enhance the amount of medical expenses to be payable to the claimant to Rs. 10,000/-. Besides this Rs. 5,000/- was paid towards pain and sufferings and in this way, total compensation payable to the claimant comes to Rs. 4,65,000/-(Rs. Four lacs sixty –five thousand). To that extent alone, the award under appeal is liable to be modified. The Tribunal has already awarded interest @ 7 % per annum and it does not require any interference.

The appeal is partly allowed. The amount awarded by the Tribunal is modified to the extent that the claimant-appellant shall be entitled to compensation amounting to Rs. 4,65,000/- along

with interest @ 7% per annum from the date of filing of claim
petition till payment.

(B.S. Verma,J.) (Irshad Hussain,J.)

RCP